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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 909

WALTER E. MEYER, Intervener,

Petitioner,

v.

BERRYMAN HENWOOD, as Trustee of St. Louis Southwestern Railway Company Lines, *et al.*,

Respondents.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Summary:

The joint petition of the Trustee and the Debtor to the District Court, filed since the denial of certiorari herein, and the proof placed in the record in the hearings on said joint petition, show that the Debtor will be in a position as of July 1, 1947, to pay $18,331,525 of its indebtedness and still have cash or its equivalent in the amount of $8,761,879.

These facts indicate changed conditions since the formulation of the plan of reorganization by the Commission, effective January 1, 1942, calling for a new plan of reorganization.

The ability of the Debtor thus to reduce its indebtedness, with an attendant great decrease in interest charges, renders a lease by Southern Pacific of the Debtor practicable, and calls for a plan of reorganization coupled with a lease. A lease, through the savings in operation that will result, will bring increased earnings to Debtor of a million dollars per annum. It will also bring an additional increase in earnings through increased traffic.

The fact that a lease is now practicable in itself is a changed condition which necessitates a new plan of reorganization.

The foregoing facts serve to distinguish this case from *Reconstruction Fin. Corp.* v. *Denver & R. G. W. R. Co.*, 328 U. S. 495, and justify a rehearing by this Court of its order denying certiorari and the granting of certiorari.

The plan of reorganization of Debtor was formulated by the Interstate Commerce Commission and approved by the District Court and the Circuit Court of Appeals. It is now contended that changed conditions justify the dismissal of the reorganization proceedings.

There should be a determination by this Court as to whether under these circumstances it is the function of the District Court or of the Interstate Commerce Commission in a Section 77 proceeding to find whether a reorganization of a debtor is necessary.

This furnishes an additional reason for a rehearing of the order denying certiorari and the granting of the petition.

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PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now your petitioner, WALTER E. MEYER, and moves the Court to set aside its order of March 10, 1947, denying his petition for a writ of certiorari herein, and to reconsider the petition, and in support thereof states:

I

There have been important developments since the denial of certiorari, which, it is submitted, require a reconsideration of said denial.

Petitioner in his petition to this Court set forth, among others, the following reason for the allowance of the writ:

> "7. The Circuit Court of Appeals, in holding that a new plan of reorganization of debtor was not required despite changed conditions since the formulation of the plan, including a great improvement in

assets, decrease in principal indebtedness and accrued interest, increase in net current assets, continuous and progressive improvement of earnings during the war, and large earnings during the post-war period, decided an important question of Federal law which has not been but should be determined by this Court. The facts as to the foregoing changed conditions serve to distinguish debtor's case from the *Denver & Rio Grande* case."

The Debtor and Southern Pacific Company, owner of 87.37% of the stock of Debtor and a creditor in the principal amount of $17,882,250, also filed petitions for certiorari with this Court. They, too, asked that certiorari be granted on the ground of changed conditions.

The respondents, Chase National Bank and Mississippi Valley Trust Company; the Protective Committee for the Terminal and Unifying Mortgage Bondholders; Guaranty Trust Company, Trustee under the First Terminal and Unifying Mortgage; and Chemical Bank & Trust Company, Successor Trustee under the General and Refunding Mortgage, in their briefs in opposition argued that the very large earnings of the Debtor since the formulation of the plan had been anticipated by the Commission and that the increase in net assets and in net current assets was for the benefit of the new security holders. Said respondents insisted upon their rights as bondholders and creditors to receive the securities awarded them under the Commission's plan, citing in support of their position the decisions of this Court in *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448; *Group of Investors* v. *Milwaukee R. Co.*, 318 U. S. 523; and *Reconstruction Fin. Corp.* v. *Denver & Rio G. W. R. Co.*, 328 U. S. 495.

After the denial of certiorari, it soon developed that there was no intention of carrying out the plan of reorganization formulated by the Commission.

On April 30, 1947, a joint petition by Hon. Berryman Henwood, Trustee of St. Louis Southwestern Railway Lines, and by St. Louis Southwestern Railway Company, hereinafter referred to as the Debtor, was filed in the United States District Court, Eastern Division, Eastern Judicial District of Missouri, the reorganization Court, asking that the Court, after hearings, enter an order finding, among other things, (a) that the Debtor had sufficient cash to enable it to carry out a certain Program for the payment of maturities and accrued interest, and at the same time leaving the Debtor in a position "to meet all probable requirements for working capital and the efficient maintenance and operation of its properties"; (b) that the Debtor was not in need of reorganization; (c) that upon the carrying out of the proposed Program, all defaults would be remedied; and (d) authorizing Debtor to file a petition with the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act for the approval of the extension and repledge of such securities as were necessary to carry out the Program.

Annexed to the petition is an exhibit entitled "Program for Dismissal of Bankruptcy Reorganization Proceedings," under which it is proposed to use some $18,000,000 of the funds of the Debtor at once and substantial funds in the near future in payment of its obligations.*

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* As early as December 1946 there had been filed in the District Court a petition by one Rosenberger asking for the payment of some $15,000,000 of Debtor's maturities and accrued interest and for a remand to the Commission. Shortly after the denial by this Court of certiorari, by motion returnable March 21, 1947, Debtor sought a further postponement of the hearings on the Rosenberger petition, stating:

> "It now appears that negotiations are pending which may result in the complete adjustment of the Rosenberger matter, in which event it will not be necessary to have a hearing upon said petition."

Rosenberger apparently regarded the joint petition of the Trustee and the Debtor as superseding his petition. Hearings on his petition are now set for June 30, 1947.

A copy of said petition and exhibit is annexed hereto as Appendix A (pp. 19-36).

The principal obligations of the Debtor now outstanding are:

$20,000,000 First Mortgage 4% Certificates;
$3,042,500 Second Mortgage 4% Certificates;
$8,063,000 First Terminal & Unifying 5's;
$9,327,500 General & Refunding 5's;
$2,241,663 Stephenville North & South Texas 5's;
$932,232 Central Arkansas & Eastern 5's;
$3,500,000 Chase National Bank loan;
$1,000,000 Mississippi Valley Trust Company loan;
$17,882,250 Southern Pacific Company loan;
$500,000 Gray's Point Terminal 5's.

The Trustee and the Debtor aver in their petition to dismiss that there has been an improvement in Debtor's financial position "during a 5-year period of $28,920,458, a figure which approximates 38% of the total capitalization provided for in the Reorganization Plan" of the Commission (par. 5), and that there is "in the possession of the Trustee, sufficient cash, or assets which are the equivalent of cash, with which to carry out the Program and, in addition, sufficient cash to meet all its necessary requirements for working capital and otherwise" (par 7).

Under the Program, after the dismissal of the reorganization proceedings, and on July 1, 1947, it is proposed to pay the following:*

	Principal	*Accrued Interest*
Second Mortgage 4s	$.....	$ 121,700
Terminal & Unifying bonds	8,063,000	403,150
General & Refunding bonds	.....	2,331,875
Stephenville 5s	2,241,663	1,394,831
Central Arkansas & Eastern 5s	932,232	591,484
Chase National Bank	700,000	259,758
Mississippi Valley Trust Co.	200,000	74,442
Southern Pacific Co.	.....	1,017,390

* See Appendix A, pp. 30-34; also Appendix B, p. 37.

The principal indebtedness thus to be paid is $12,136,-895; the accrued interest $6,194,630, a total immediate payment of $18,331,525.

The Debtor's note held by the Southern Pacific is to be extended, and the interest thereon reduced to 3%. The notes held by the Chase National Bank and the Mississippi Valley Trust Company are also to be extended, the interest on said notes being reduced to 2½%.

Payment is to be made during the next five years of an additional $5,500,000. This will include the balance of the notes due the Chase National Bank and the Mississippi Valley Trust Company in the amounts of $2,800,000 and $800,000 respectively. It will also include an annual payment to Southern Pacific of $280,000, first on account of the principal of a non-interest bearing note of $1,000,000, representing the balance of accrued interest due that company as of July 1, 1947; and when that is paid then on account of the indebtedness due Southern Pacific Company on a renewed and extended note for the present note of Debtor in the amount of $17,882,250. In addition, the Gray's Point Terminal Railway Company Bonds outstanding in the amount of $500,000 are to be paid at their maturity on December 1, 1947.

After all of these payments are made, beginning on January 1, 1953, Southern Pacific is to receive $1,000,000 per annum in reduction of the balance of the principal of its note until the entire amount has been paid.

No dividends are to be declared on the preferred or common stock of the Debtor until payment has been made of one-half of the remaining indebtedness of $2,800,000 due the Chase National Bank and $800,000 due the Mississippi Valley Trust Company.

As alleged in said petition (par. 10), and as appears from Exhibits 1 to 8 in the hearings thereon, Southern Pacific Company, the Chase National Bank and the Missis-

sippi Valley Trust Company have consented in writing to the Program and agreed to the adjustment of their respective claims, and representatives of certain owners and holders of bonds of the Stephenville North & South Texas and Central Arkansas & Eastern, subsidiaries of Debtor, have entered into agreements compromising their respective claims for something less than the full amount.

At the hearings, held on May 19th and 20th, the Chief Executive Officer, the Comptroller and the Traffic Manager of Debtor testified in support of the petition to dismiss.

Exhibit 11 (Appendix B, p. 37), placed in the record at said hearings, shows that after the expenditure of $18,331,525 on July 1, 1947, there will remain liquid resources in the amount of $8,761,879.

Exhibit 15 (Appendix C, p. 38) is an estimated income account for the years 1947-1951 after giving effect to the proposed financing as of July 1, 1947.

The greater part of the testimony and exhibits dealt with the matter of prospective earnings.

This petitioner asked at said hearings, as he had previously asked, that pending a decision by the Supreme Court upon his petition for rehearing there be no decision by the District Court on the joint petition to dismiss, or, at least, that the proceedings be remanded to the Commission in order that the matters which the Trustee and the Debtor sought to have determined by the District Court, including a determination that the Debtor was no longer in need of reorganization, should be determined by the Commission.

Thereafter the District Court granted the relief sought by said petition, making the following findings:

> "1. That the Debtor has, in the possession of the Trustee, sufficient cash, or assets which are the equiv-

alent of cash, to enable it to carry out the Program and, in addition, to meet all proper requirements for working capital and the efficient maintenance and operation of its properties;

"2. That the Debtor and its subsidiary debtors are no longer in need of reorganization and that, upon the carrying out of the Program, the Debtor will be able to meet its debts and the debts of its subsidiary debtors as they mature;

"3. That, upon the carrying out of the Program, all defaults in the payment of principal and interest on any obligations of the Debtor and its subsidiary debtors and all other defaults or events of default under any of the mortgages, indentures, or securities issued by the Debtor and its subsidiary debtors have been, or will have been, cured or remedied."

The Court also found that upon the Commission's approval of the applications under Section 20a of the Interstate Commerce Act, the proceedings should be dismissed.

A copy of the order of the District Court is annexed hereto as Appendix D (pp. 39-42).

This Court held in *Group of Investors* v. *Milwaukee R. Co.*, 318 U. S. 523, 540, that the basic question in a valuation for reorganization purposes is how much the enterprise in all probability can earn, and in *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448, 472, that valuation is a function limited to the Commission.

It is this petitioner's contention, based on said decisions, that whether the Debtor is in need of reorganization is a matter for the Commission and not the District Court to determine, and that the action of the District Court in granting the petition to dismiss, without first referring the matter back to the Commission in order to determine the prospective earnings of Debtor, was in disregard of

said decisions. The importance of this question of law calls for a reconsideration of the order denying certiorari and the granting of certiorari.

In addition, the facts set forth in the petition to dismiss and the proof in the hearings thereon serve to further distinguish this case from *Reconstruction Fin. Corp.* v. *Denver & Rio G. W. R. Co., supra,* and call for a reconsideration of the order denying certiorari on the ground of the changed conditions, and the granting of certiorari.

II

The proposed immediate reduction in indebtedness and the great decrease in interest charges render a lease by Southern Pacific of the Debtor practicable, and give additional support to the argument that on the ground of changed conditions this Court should grant a rehearing of its order denying certiorari.

It is for the Interstate Commerce Commission to determine whether a plan of reorganization coupled with a lease should be formulated. The findings and order of the District Court limit the function of the Commission merely to a determination of whether upon an application under Section 20a of the Interstate Commerce Act, the Commission should approve "of the extension, renewal, issuance, pledge and repledge by the Debtor of such securities as are necessary to carry out the Program" (Appendix D, p. 41).

Savings in operation through a lease, as the record shows, will result in increased earnings to Debtor of a million dollars per annum and in additional earnings through increased traffic.

In its majority report herein the Commission stated (R. 3562):

> "As to the possibilities of a lease of the debtor by the Southern Pacific, * * * it appears that such an

arrangement, or a consolidation of the properties, holds promise of large savings in operating expenses, with the further promise of some increase in traffic."

Chairman Eastman in his dissenting opinion showed that he was in accord with the majority members of the Commission as to the savings in operation and increased traffic resulting from a lease. He discussed the impressive proof as to savings as well as to increased revenue to be effected through a lease, as follows:

"This brings me to another very important matter. The uncontradicted evidence is that if the Southern Pacific were to lease the debtor or if the two were to be consolidated, there would be very important savings in expense as well as increases in revenue. In April 1938, Holden[1] testified in Ex Parte No. 123 that a study of economies possible in a consolidation of the Southern Pacific and the debtor indicated more than three-quarters of a million dollars. Meyer testified that in 1932 (when traffic was at its lowest ebb) Turney[2] told him that savings of $1,009,000 could be realized through consolidation.[3] He further testified that in a conference with Upthegrove in November 1932, the latter estimated the savings at about $925,000 for the year 1933, on the basis of the earnings of 9 months of the year 1932.[4] In February 1935, Paul Shoup, vice chairman of the Southern Pacific, wrote Bovenizer of Kuhn, Loeb & Company, enclosing a tentative plan for reorganization of the debtor. This plan proposed a lease of debtor to the Southern Pacific, stating that the savings 'will be not less than

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[1] Hale Holden was Chairman of Southern Pacific Company.

[2] John R. Turney was Vice-President in charge of traffic of Debtor.

[3] R. 891.

[4] R. 892.

> $500,000, and may be considerably greater.' It also stated that there should be an increase in the earnings of the consolidated property through the entrance of the Southern Pacific Company directly into such important Mississippi gateways as St. Louis and Memphis.[1] Note, in this connection, Shoup's recognition of the fact that the traffic results of the acquisition of control were not such as would follow the actual union of the properties into a single system."

Chairman Eastman expressed the opinion that savings would amount to $1,000,000 per annum.[2] *He proposed that the hearings before the Commission be reopened in order that an opportunity might be given to consider a plan of reorganization coupled with a lease* (R. 3728-3732).

On February 13, 1935, Hale Holden, Chairman of Southern Pacific Company, in a letter to the President of Debtor, had proposed a voluntary reorganization, including a lease. Said Holden:

> "* * * The good reasons for the lease, both from the point of view of economy and of a unified operation, are easily to be demonstrated and should be of weight with the Commission" (R. 1971).

Speaking for Southern Pacific in the hearings before the Commission in 1939, Holden took the position that a lease of the property of the Debtor was not practicable

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[1] R. 1974-79.

[2] In 1931 Debtor's total operating revenues were $17,950,372; in 1932, $12,554,433, in 1935, $15,742,228 and in 1939, $19,609,965 (R. 5329). In 1946 they were $46,646,703. While opportunity for savings would not necessarily increase in proportion to the increase in operating expense in carrying larger amounts of traffic, there can be no doubt that savings in operation now would be greatly in excess of a million dollars annually.

"at this time." Among reasons given were Debtor's heavy interest charges (R. 5649, 5650).*

If the good reasons for a lease were so evident in 1935, how much more evident should they be in 1947 in view of the Debtor's subsequent very large earnings and in view of the prospective immediate great decrease in interest charges?

The improvement in Debtor's financial condition was discussed in petitioner's petition to this Court (p. 15) and brief (pp. 51-58). Much proof bearing on this subject is also set forth in the petitions for certiorari of both the Debtor and Southern Pacific Company.

The progressive decrease in Debtor's interest charges if the program is adopted is evident from the following:

Fixed charges for 1946, according to the annual report of the company, were $3,015,037. The Program calls for immediate payment of maturities in the sum of $12,136,-895, which will result in a reduction in annual interest charges of $606,845. The agreement of the Southern Pacific and the Banks to extend their loans and to accept reduced interest charges will result in additional savings of $447,645, a total immediate saving of $1,054,490 per annum.

After the dismissal of the reorganization proceedings, a further decrease in interest charges is assured by the ability of Debtor to call at 105 the General and Refunding Bonds outstanding in the hands of the public in the amount of $9,327,500. Assuming that these bonds can be refunded only on a 3½% basis, there will be a further saving in interest charges in the amount of $139,913.

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* The Circuit Court of Appeals, while agreeing as to the savings and increase in earnings through a lease, relied on the testimony of Holden that a lease was not practicable (R. 5647-50). The Court overlooked Holden's earlier statement and much other proof in the record as to the desirability and practicability of a lease (R. 3163-69).

The payment, as provided in the Program, of an additional $5,500,000 (of which $1,000,000 is a non-interest bearing note) over a period of five years will result in a further saving of interest of $127,000, or a total saving of $1,321,403.

The interest charges of Debtor, instead of being $3,015,037 as of 1946, would therefore be $1,693,634.

But in determining the practicability of a lease by Southern Pacific based on a fixed rental equal to said interest charges, the fact that the interest charges will be no greater than this amount is not all that is to be considered.

Southern Pacific, if it agrees to lease Debtor at a rental in an amount equal to fixed charges, will not be obligating itself to others in that amount. Of the said charges, $536,468 is interest at 3% on the indebtedness of Debtor to Southern Pacific in the principal amount of $17,882,250. To that extent its obligation will be only to itself. *Thus, under a lease, Southern Pacific's liability to others will be limited to $1,157,166.** For every year, the year 1932 excepted, Debtor has earned in excess of this amount. Debtor for the year 1946 earned $7,680,706 available for fixed charges or not far from seven times that sum.

Can it be reasonably claimed in view of this that a lease is not practicable?

Furthermore, in thus obligating itself Southern Pacific would not be unmindful of the fact that after fixed charges are taken care of, Debtor's earnings will accrue to Southern Pacific as the owner of $19,313,400 of the Debtor's 5% preferred stock out of a total of $19,893,600

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* Even on the assumption that the interest rate on the indebtedness to Southern Pacific will be greater than 3%, the liability to others in the amount of $1,157,166 will remain unaffected.

par value, and $13,083,400 of the common stock out of a total of $17,186,100 par value. Earnings only on the $580,200 par value of preferred and $4,102,700 par value of common stock, held by minority stockholders, will not go to the Southern Pacific.

The importance of a lease to Debtor and its many thousands of security holders is evident from the fact that the saving as the result of a lease of a million dollars in operating expenses would amount to one-third of present interest charges; to one-half of the interest charges immediately after the adoption of the Program, and, at the end of five years, to an amount not far from the entire interest charges exclusive of interest on Southern Pacific's loan.

Moreover, to such increase in earnings through savings in operation must be added the earnings resulting from the increase in traffic which would accrue to Debtor as a result of "one-line" solicitation of traffic which would be initiated in connection with a lease (R. 2279-80).

Both the majority report of the Commission and Chairman Eastman's dissenting opinion, above quoted, refer to this increase in traffic.

J. T. Saunders, Vice-President in Charge of Traffic of Southern Pacific Company, testified in the hearings before the Commission (R. 2279-80):

> "I was of the opinion prior to the acquisition and control of the Cotton Belt—and that opinion has been borne out by our experience since that acquisition—that if we operated the Cotton Belt as part of the Southern Pacific System, in respect of having our own Southern Pacific trains form a direct contact and interchange between Southern Pacific and connecting lines at St. Louis, with the ability of our soliciting organization to plead with shippers that we were entitled to our 100 per cent maximum haul, everything

being equal, that we would be able to further increase the traffic moving via the Cotton Belt than we have already been able to do."

A lease, coupled with the subordination of Southern Pacific's claim, would go a long way to protect the minority stockholders. Even without subordination it would be helpful.

Not only is a lease in the interest of the Debtor and of Southern Pacific, owner of seven-eighths of Debtor's outstanding stock.

Because of the large economies effected it would be in the public interest.

The Commission ruled (R. 3562): "A possible lease cannot under the present law be forced on Southern Pacific."

In *Pepper* v. *Litton*, 308 U. S. 295, 310, it was held that simply a violation of the rules of fair play and good conscience by a claimant, a majority stockholder, in a bankruptcy proceeding justified the disallowance or subordination of his claim.

Let us assume that, in accordance with a remand by this Court, the Commission reopened the hearings. If the Commission then found that a lease was practicable and advantageous and Southern Pacific continued to refuse to lease Debtor, on this ground alone the Commission would be justified in formulating a plan of reorganization expunging or subordinating the claim of Southern Pacific Company as a creditor and stockholder of Debtor. Faced by such an alternative there can be little doubt that Southern Pacific Company would lease Debtor.

Petitioner submits that the greatly improved financial condition of Debtor requires a fresh consideration by the

Commission of the practicability of a lease and a new plan of reorganization in connection therewith.

Since the Commission's supplemental report of March, 1942, there has been paid to bondholders and creditors on account of principal and accrued interest the sum of $10,207,820.

There can be no objection to the immediate payments proposed under the Program to all parties, with the exception of Southern Pacific. Such payments would amount to $17,314,135.* These payments would be consistent with the previous practice by the Trustee of making payments on principal and accrued interest. There will therefore be no reason for delay, if this Court grants certiorari, in making payments to parties other than Southern Pacific.

If certiorari is granted, this Court would be in a position, upon the proof in the record, to remand the proceedings to the District Court, with instructions to remand to the Interstate Commerce Commission to prepare a new plan of reorganization expunging or at least subordinating Southern Pacific's claim.

This Court in its discretion could at least remand the proceedings to the District Court with instructions to remand to the Commission in order that the Commission consider the proof in the record as to the wrongful

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* A bill has been introduced at the present session of Congress, H. R. 3237, which is largely a revival of the former Reed-Wheeler bill (S. 1253, 79th Cong., 2d Sess.), vetoed by President Truman. The President pointed out in his Memorandum of Disapproval that S. 1253 failed to direct specifically "the immediate reduction of the grossly excessive interest rates now wasting the funds of the railroads in Section 77 proceedings." The proposed legislation meets the President's objections. Interest charges on Debtor's indebtedness during the reorganization proceedings amount to about 60% of the principal. Debtor, if the bill is enacted, will be in a position to claim a great reduction in interest charges during reorganization.

and illegal acts of Southern Pacific in its relations with Debtor which call for subordination (including the additional proof placed in the record in the hearings before the District Court and not previously considered by the Commission, nor indeed by the courts). This Court in its discretion, in view of the fact that the Commission has never made an investigation in these proceedings, could require the Commission to institute such an investigation.

If this Court or the Commission should find that there should be subordination because of Southern Pacific's wrongful and illegal acts, it would devolve upon the Commission to prepare a new plan of reorganization with subordination of Southern Pacific's claim, whether or not a new plan would otherwise be necessary. This is in accordance with the principle, practiced by courts of equity, that having taken jurisdiction, there is a duty to do full equity, and right all wrongs suffered.

If certiorari is granted, this Court will be in a position to remand with instructions that the Commission determine whether a lease by Southern Pacific of the property of the Debtor is practicable, and, if it finds that a lease is practicable, in the event of the refusal of Southern Pacific to lease, on this ground alone and in the absence of a finding that there were other grounds for subordination, that the Commission prepare a plan subordinating Southern Pacific's claim.

The facts as to the new developments hereinabove referred to are not in the record and were not known to petitioner at the time of the filing of his original petition for certiorari. The new matter in this petition is based largely on the joint petition of the Trustee and the Debtor to dismiss the proceedings and the other documents printed in the Appendix, and the inferences to be

drawn therefrom, and is believed by this petitioner to be true.

For the reasons set forth in his petition for certiorari and in this petition for rehearing, petitioner respectfully asks that the petition for rehearing be granted, and that the judgment of this Court denying certiorari be, upon further consideration, set aside, and that the petition for certiorari be granted.

Respectfully submitted,

WALTER E. MEYER,
Petitioner, *Pro Se*,
And as Attorney for other Stockholders.

R. WALSTON CHUBB,
Attorney for Petitioner.

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK } ss.:

WALTER E. MEYER, being duly sworn, deposes and says: I am the petitioner named in the foregoing petition for rehearing. As to the matter contained therein which is new and which is not in the record, and which has been brought to my attention since the denial of the petition for certiorari, such matter is true to my knowledge, information or belief.

WALTER E. MEYER.

Subscribed and sworn to before me
this 27th day of May, 1947.

JEAN SCHWEDEL,
Notary Public,
New York County.
Commission expires March 30, 1949.

I do hereby certify that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay.

Dated: May 27, 1947.

WALTER E. MEYER.

Appendix A.

IN THE

DISTRICT COURT OF THE UNITED STATES
EASTERN DIVISION,

EASTERN JUDICIAL DISTRICT OF MISSOURI.

In the Matter of ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 8497

JOINT PETITION OF THE TRUSTEE AND THE DEBTOR FOR AN ORDER DISMISSING THESE PROCEEDINGS AND FOR OTHER RELIEF

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN JUDICIAL DISTRICT OF MISSOURI, EASTERN DIVISION:

The joint petition of BERRYMAN HENWOOD, Trustee of the property of St. Louis Southwestern Railway Company, Debtor, and of St. Louis Southwestern Railway Company of Texas, subsidiary debtor, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Debtor, respectfully shows:

1. On December 12, 1935, the petitioner St. Louis Southwestern Railway Company, Debtor, filed its petition herein under Section 77 of the Bankruptcy Act, as amended, alleging that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization; and thereupon Order No. 1 in these proceedings was entered

approving said petition as properly filed. On the same date or shortly thereafter, similar petitions under Section 77 of the Bankruptcy Act, as amended, were filed herein by three wholly-owned subsidiaries of the Debtor, namely, St. Louis Southwestern Railway Company of Texas, Central Arkansas and Eastern Railroad Company, and Stephenville North & South Texas Railway Company (herein sometimes referred to as subsidiary debtors), each alleging that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization in connection with, or as a part of, the plan of reorganization of the Debtor; and thereupon this Court entered orders approving said petitions as properly filed. Thereafter, on December 31, 1935, after a hearing on certain objections to said petitions, this Court made and entered a further order approving all said petitions as properly filed and directing that its said prior orders remain in full force and effect until the further order of this Court.

2. On January 3, 1936, by order of this Court, the petitioner Berryman Henwood was appointed Trustee of all the properties of the Debtor and its subsidiary debtors, such appointment to become effective upon the approval of the bond of said Trustee and the ratification of his appointment by the Interstate Commerce Commission (herein called the "Commission"). Thereafter the Commission ratified the appointment of said Berryman Henwood and he thereupon duly qualified, and ever since has acted, and is now acting, as such Trustee.

3. Under date of June 30, 1941, the Commission issued its Report and Order setting forth a proposed Plan of Reorganization for the Debtor and its subsidiary debtors. Thereafter, under date of March 9, 1942, the Commission

issued its Supplemental Report and Order modifying said Plan of Reorganization in certain respects. On March 23, 1942, the said Plan of Reorganization, as so modified, was certified by the Commission to this Court, and thereafter, on February 8, 1944, this Court entered an order approving the said Plan of Reorganization. Thereafter, in August, 1946, upon appeals from said order, the Circuit Court of Appeals for the Eighth Circuit affirmed said order approving said Plan of Reorganization except in one relatively minor respect (the said Plan of Reorganization as modified by said decision being hereinafter usually referred to as the "Reorganization Plan"), and subsequently, on March 10, 1947, the Supreme Court of the United States denied petitions for writs of certiorari to review the decision of said Circuit Court of Appeals. Thereafter, but without staying its mandate (which was later sent to the said Circuit Court of Appeals, which later sent its mandate to this Court), said Supreme Court extended to May 23, 1947, the time within which one of the petitioners for a writ of certiorari might apply to the said Supreme Court for a rehearing of the order denying said writ.

4. The Reorganization Plan has not yet been submitted to the creditors for their acceptance or rejection. Any such submission would require at least several months. After such submission it is not unlikely that there would have to be a further hearing before this Court on confirmation of the Reorganization Plan; and thereafter any order of this Court confirming, or refusing to confirm, the Reorganization Plan would be subject to review upon appeal. Moreover, as the result of debt retirements and large payments made by the Debtor subsequent to January 1, 1942, the effective date of the Reorganization Plan, on account of overdue interest on the Debtor's outstand-

ing Bonds, it is unlikely that the Reorganization Plan could be interpreted and applied without protracted litigation. It is thus probable that neither the Reorganization Plan nor any other plan of reorganization of the Debtor can be consummated under Section 77 of the Bankruptcy Act, as amended, for at least several years.

5. Since the Debtor filed its petition for reorganization and since the Commission issued its Supplemental Report and Order of March 9, 1942, the Debtor's earnings have been very substantial. As the result of such earnings, the Debtor's financial position has greatly improved. Thus, during the 5-year period from December 31, 1941, to December 31, 1946, Debtor's outstanding indebtedness was reduced by $1,845,041; its interest in default was reduced by $8,851,523; its net investment in road and equipment increased by $2,976,312 (notwithstanding large write-offs aggregating $5,688,196, because of abandoned lines and for amortization of war facilities); its net current assets increased by $15,247,582; and its cash and temporary cash investments increased by $18,274,508. These changes reflect an aggregate improvement in Debtor's financial position during a 5-year period of $28,920,458, a figure which approximates 38% of the total capitalization provided for in the Reorganization Plan.

6. As the result of the Debtor's large accumulation of cash and its increased earnings and earning power, it is now able, upon the carrying out of the Program hereinafter mentioned, to meet its debts, and the debts of its subsidiary debtors (for all of which the Debtor is liable), as they mature. The Debtor and its said subsidiary debtors are, accordingly, no longer in need of reorganization and are no longer desirous of effecting a plan of reorganization. They desire that the respective properties of the

Debtor and of St. Louis Southwestern Railway Company of Texas, subsidiary debtor, be restored to them, and that these proceedings be dismissed. Upon the dismissal of these proceedings as herein prayed, the Debtor will pay in full all obligations of itself and its subsidiary debtors, both principal and interest, now in default, or will otherwise discharge or provide for all such obligations in a manner consented to by the holders thereof pursuant to the "Program for Dismissal of Bankruptcy Reorganization Proceedings," dated April 7, 1947 (herein sometimes called the "Program"), annexed hereto and made a part hereof as Exhibit A.

7. The Debtor has, in the possession of the Trustee, sufficient cash, or assets which are the equivalent of cash, with which to carry out the Program and, in addition, sufficient cash to meet all its necessary requirements for working capital and otherwise.

8. Upon the carrying out of the Program, all obligations of the Debtor's subsidiary debtors, Central Arkansas and Eastern Railroad Company and Stephenville North & South Texas Railway Company, which companies now have no assets or properties and no longer are engaged in any business, will have been fully paid or discharged; and all obligations of the Debtor and its subsidiary debtor, St. Louis Southwestern Railway Company of Texas, which will have then matured will have been paid, settled, or otherwise disposed of; all defaults on obligations of the Debtor and its subsidiary debtors and all defaults or events of default under any mortgages and indentures securing obligations of the Debtor and its subsidiary debtors will have been cured; and the Debtor and its subsidiary debtor, St. Louis Southwestern Railway Company of Texas, will have earnings and prospective earnings ade-

quate to meet all their obligations as they mature and, in addition, will have adequate working capital for the maintenance and efficient operation of their railway properties.

9. The Debtor by this petition, and subject to all necessary orders of the Court and the Commission, evidences its undertaking, duly authorized by its Board of Directors, to make all payments, enter into all agreements, and take all other steps to be performed by it as set forth in the Program.

10. Southern Pacific Company, The Chase National Bank of the City of New York, and The Mississippi Valley Trust Company, holders of secured notes of the Debtor, have heretofore consented in writing to the Program and agreed to the adjustment of their respective claims in the manner therein set forth. Representatives of certain owners and holders of Central Arkansas and Eastern Railroad Company First Mortgage Bonds and Stephenville North & South Texas Railway Company First Mortgage Bonds, or certificates of deposit therefor, have entered into agreements compromising their respective claims against the Debtor and its subsidiary debtors, Central Arkansas and Eastern Railroad Company and Stephenville North & South Texas Railway Company, in amounts less than the full amounts of such claims.

WHEREFORE, Petitioners pray that the Court—

1. Enter an order setting this petition down for hearing at an early date, directing that the Petitioner Trustee forthwith give notice of the time and place of said hearing to the Interstate Commerce Commission, to the subsidiary debtors, and to all intervenors and parties in interest or their counsel, and directing that said Trustee give further notice to all stockholders and creditors of the

several debtors by publishing notice of the time and place of said hearing in at least one daily newspaper in each of the cities of St. Louis, Dallas, and New York; and further directing that any person or party opposing this petition file an affidavit or answer thereto and serve copies of the same on counsel for the Petitioners not less than five days prior to the date fixed for said hearing.

2. Enter a further order, after hearing—

(a) finding and determining that the Debtor has, in the possession of its Trustee, sufficient cash, or assets which are the equivalent of cash, to enable it to carry out the Program and, in addition, to meet all probable requirements for working capital and the efficient maintenance and operation of its properties;

(b) finding and determining that the Debtor and its subsidiary debtors are not in need of reorganization and that, upon the carrying out of the Program, the Debtor will be able to meet its debts and the debts of its subsidiary debtors as they mature;

(c) finding and determining that, upon the carrying out of the Program, all defaults in the payment of principal and interest on any obligations of the Debtor and its subsidiary debtors and all other defaults or events of default under any of the mortgages, indentures, or securities issued by the Debtor and its subsidiary debtors have been, or will have been, cured or remedied;

(d) authorizing and directing the Debtor to file a petition with the Commission under Section 20a of the Interstate Commerce Act for approval of the extension, renewal, issuance, pledge and repledge by the Debtor of such securities as are necessary to carry out the Program;

(e) finding and determining that, upon the Commission approving the extension, renewal, issuance, pledge and repledge by the Debtor of the securities necessary to carry out the Program, in so far as such approval may be requisite, these proceedings should be dismissed, that the respective properties of the debtors held by the Trustee should be returned to them, and that the Debtor should make all payments and take all steps set forth in the Program and assume all obligations of the Trustee and all prior obligations of the Debtor which have not been disaffirmed by the Trustee;

(f) directing the Trustee to prepare and file a final report and accounting of his administration of the trust estate;

(g) retaining jurisdiction of this Court, after the Commission has approved the extension, renewal, issuance, pledge and repledge by the Debtor of the securities necessary to effectuate the program—

(i) to enter an appropriate order or orders authorizing and directing the Debtor and other parties to consummate the Program and fixing the date for the filing of petitions for allowances;

(ii) to dismiss the proceedings and to direct the return to the debtors of their respective properties held by the Trustee;

(iii) to determine all allowances of fees and expenses;

(iv) to approve the administration of the trust estate, to pass upon the final report and account of the Trustee and to order his discharge and the discharge of his surety; and

(h) granting such other and further relief to which the Debtor and its subsidiary debtors and the Trustee and other parties hereto may be entitled.

April 29, 1947.

(Signed) BERRYMAN HENWOOD,
Trustee of the properties of St. Louis Southwestern Railway Company, Debtor, and St. Louis Southwestern Railway Company of Texas, subsidiary Debtor.

A. H. KISKADDON,
JOHN W. MURPHY,
Cotton Belt Building,
St. Louis, Missouri,
Attorneys for Berryman Henwood, Trustee.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Debtor,

By (Signed) F. W. GREEN,
Vice President.

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Special Attorneys for the Debtor.

(Verifications)

Appendix A.

EXHIBIT A

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

Program for Dismissal of Bankruptcy Reorganization Proceedings

I.

Introductory

On December 12, 1935, the St. Louis Southwestern Railway Company filed a petition in the United States District Court for the Eastern District of Missouri, alleging that it was unable to meet its debts as they matured and that it desired to effect a Plan of Reorganization pursuant to Section 77 of the Bankruptcy Act, as amended. On the same date or shortly thereafter similar petitions were filed by three of the Company's subsidiaries. For a period of over 11 years the properties of the Railway Company and its said subsidiaries have been operated under direction of the Court. No Plan of Reorganization has yet been consummated. Although a Plan has been certified by the Interstate Commerce Commission and approved by the Court, it has not yet been submitted to the security holders for vote thereon and it is improbable that the pending Plan of Reorganization can be consummated within the next two or three years.[1] As the result of large interest payments made pursuant to order of the District Court

[1] In March, 1942, the Commission certified the Plan to the District Court, which Plan was approved by the District Court in February, 1944. In August, 1946, the Circuit Court of Appeals for the Eighth Circuit affirmed the order of the District Court approving the Plan, except in a relatively minor respect. On March 10, 1947, the Supreme Court denied petitions for certiorari to review the decision of the Circuit Court of Appeals.

since January 1, 1942, the effective date of the Plan, the carrying out of the Plan would give rise to difficult problems of adjustment and interpretation which might result in protracted litigation. Moreover, if certain proposed legislation were enacted, the Plan might have to be entirely abandoned and a new start made on reorganization if the properties were to remain in the jurisdiction of the Court.

During the 11-year period that the railroad has been operated under jurisdiction of the Court, World War II was begun and has ended, and the financial and physical condition of the Railway Company has so changed that it no longer is in need of reorganization and desires the dismissal of the bankruptcy reorganization proceedings. Its earnings in recent years and its prospective earnings are such that, upon the carrying out of the Program outlined below, it will have discharged all obligations which will be then due and payable, will be in a position to meet all its obligations as they mature, and will have adequate working capital for the efficient maintenance and operation of its railway properties.

II.

Petition for Dismissal of Bankruptcy Reorganization Proceedings.

It is contemplated that the Railway Company and/or the Bankruptcy Trustee, and possibly its said subsidiaries, will file a petition with the District Court for a dismissal of the Bankruptcy reorganization proceedings on the ground that the Railway Company and its subsidiary debtors are no longer in need of reorganization and will be able to meet their obligations as they mature after the dismissal of such proceedings and after making the adjustments provided for in this Program. It is also con-

templated that, with the approval of the Court, application will be made to the Interstate Commerce Commission for approval of the renewal and extension of certain outstanding notes of the Railway Company, the issuance of certain non-interest-bearing Serial Notes, the repledge of bonds as collateral therefor, and any other steps in connection therewith if such approval is required.

III.

Program of Railway Company in connection with Termination of Bankruptcy Reorganization Proceedings.

Upon the dismissal of the bankruptcy proceedings, and subject to the order of the Court, the Railway Company will either pay in full all obligations of principal and interest now in default or will otherwise provide for all of such obligations in a manner consented to by all the holders thereof. Securities in default which are not paid or otherwise provided for will be continued on a current interest basis. The following action will be taken in respect to the various securities and obligations in default:[2]

1. *$10,000,000 Second Mortgage Income Certificates.* All unpaid interest coupons, maturing prior to the closing date, on these Certificates will be paid, and future accruing interest will be paid when and as the same becomes payable pursuant to the provisions of the Second Mortgage.

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[2] The closing date has been assumed to be July 1, 1947, for the purpose of the computations herein. Actually such closing date may be later, and in that event adjustments will have to be made. All amounts and computations herein are subject to verification and correction.

Appendix A.

2. *$21,596,000 First Terminal and Unifying Bonds—Payments and Cancellation.* All the First Terminal and Unifying Bonds (herein referred to as Terminal Bonds) are to be cancelled, the Terminal Mortgage is to be satisfied, and the collateral held by the Terminal Mortgage Trustee turned over to the Chemical Bank & Trust Company, as Trustee for the General and Refunding Bonds (herein referred to as Refunding Bonds), thus stepping up the position of the lien for the Refunding Bonds to the place now held by the Terminal Mortgage. This collapsing of the Terminal Mortgage will be effectuated as follows:

   (a) $8,063,000 Terminal Bonds held by the public (the principal being now due and payable by declaration) will be paid, with accrued interest to the date of payment, the funds therefor to be deposited by the Railway Company in trust with the Guaranty Trust Company of New York, the Terminal Mortgage Trustee.

   (b) $13,533,000 pledged Terminal Bonds will be cancelled and surrendered by the Chemical Bank & Trust Company, as Refunding Mortgage Trustee, to the Terminal Mortgage Trustee.

   (c) The Terminal Mortgage Trustee will cancel the Terminal Mortgage and deliver all collateral held by it to the Chemical Bank & Trust Company, as Refunding Mortgage Trustee.

3. *$39,557,500 General and Refunding Bonds.* All unpaid interest coupons, maturing prior to the closing date, on the $9,327,500 principal amount of these Bonds held by the public will be paid, and all subsequently accruing interest will be paid when and

as the same becomes due. The $13,533,000 Terminal Bonds pledged under the Refunding Mortgage will be surrendered to the Terminal Mortgage Trustee for cancellation, the Terminal Mortgage will be cancelled and all collateral held under that Mortgage delivered to the Chemical Bank & Trust Company, as Trustee under the Refunding Mortgage, as provided in paragraph 2 above. $30,230,000 principal amount of the Refunding Bonds are pledged to secure the 5% Secured Notes held by Southern Pacific Company, The Chase National Bank of the City of New York, and The Mississippi Valley Trust Company, mentioned below. These pledgees will waive the payment of the unpaid interest on the pledged Refunding Bonds accrued to the date of closing and the pledged Bonds will be appropriately stamped to evidence such waiver. They will also waive the payment of all unpaid accrued interest on the pledged Southern Illinois and Missouri Bridge Company Bonds.

4. *$2,241,663 Stephenville North & South Texas Railway Company First Mortgage Bonds.* These Bonds will be paid at the reduced principal amount thereof, with interest to the date of payment, under arrangements similar to those provided for the payment of the publicly-held Terminal Bonds as set forth in paragraph 2(a) above, except to the extent that certain holders thereof may have agreed to accept less than such payment of principal and interest in full.

5. *$932,232 Central Arkansas & Eastern Railroad Company First Mortgage Bonds.* These Bonds will be paid at the reduced principal amount thereof, with interest to the date of payment, under arrangements

similar to those provided for the payment of the publicly-held Terminal Bonds as set forth in paragraph 2(a) above, except to the extent that certain holders thereof may have agreed to accept less than such payment of principal and interest in full.

6. *$3,500,000 Chase National Bank 5% Secured Note.* $259,758 on account of interest accrued to July 1, 1947, and $700,000 on account of the principal of this Note will be paid. The Note will be renewed and extended in the reduced principal amount of $2,800,000 and will continue to be secured by the Refunding Bonds and the Southern Illinois and Missouri Bridge Company Bonds now pledged with the noteholder. A Renewal and Extension Agreement will be entered into with The Chase National Bank of the City of New York, setting forth the terms and conditions of the renewal and extension of the Note. Such Agreement will provide that the Note until due will bear interest at the rate of 2½% per annum, payable semi-annually, and that the reduced principal amount will be paid in full by semi-annual payments thereon in equal amounts over a five-year period. This Note, as renewed and extended, will be redeemable without the payment of any premium, as a whole at any time, or in part from time to time in an amount equal to any one or more of the principal instalments of such Note. No dividends will be payable on the preferred and common stocks of the Railway Company until 50% of the reduced principal amount of the Note has been paid. At the option of the said Bank the Railway Company will, in lieu of entering into a Renewal and Extension Agreement as aforesaid, issue one or more renewal notes to the Bank on the foregoing terms.

7. *$1,000,000 Mississippi Valley Trust Company 5% Secured Note.* $74,442 on account of interest accrued to July 1, 1947, and $200,000 on account of the principal of this Note will be paid. The Note will be renewed and extended in the reduced principal amount of $800,000 and will continue to be secured by the Refunding Bonds and Southern Illinois and Missouri Bridge Company Bonds now pledged with the noteholder. A Renewal and Extension Agreement will be entered into with The Mississippi Valley Trust Company, setting forth the terms and conditions of the renewal and extension of the Note. Such Agreement will provide that the Note until due will bear interest at the rate of 2½% per annum, payable semi-annually, and that the reduced principal amount will be paid in full by semi-annual payments thereon in equal amounts over a five-year period. This Note, as renewed and extended, will be redeemable without the payment of any premium, as a whole at any time, or in part from time to time in an amount equal to any one or more of the principal instalments of such Note. No dividends will be payable on the preferred and common stocks of the Railway Company until 50% of the reduced principal amount of the Note has been paid. At the option of the said Bank the Railway Company will, in lieu of entering into a Renewal and Extension Agreement as aforesaid, issue one or more renewal notes to the Bank on the foregoing terms.

8. *$17,882,250 Southern Pacific Company 5% Secured Note.* $1,017,390 on account of accrued interest will be paid in cash. The balance of accrued interest to July 1, 1947, $1,000,000, will be paid by the issuance by the Railway Company of non-interest-bearing Serial Notes for $1,000,000. The Note in the amount

of $17,882,250 presently held by Southern Pacific Company will be renewed and extended in the same principal amount. This Note and the non-interest-bearing Serial Notes will be secured by the Refunding Bonds and Southern Illinois & Missouri Bridge Company Bonds now pledged with Southern Pacific Company. A Renewal and Extension Agreement will be entered into with Southern Pacific Company, setting forth the terms and conditions of the renewal and extension of the $17,882,250 Note. Such Agreement will provide that the Note until due will bear interest at the rate of 3% per annum, payable semi-annually, and that the principal amount will be paid in full by semi-annual payments thereon as hereinafter indicated. This Note, as renewed and extended, will be redeemable without the payment of any premium, as a whole at any time, or in part from time to time in an amount equal to any one or more of the principal instalments of such Note. During the first five years after the closing, $720,000 a year will be required to make the payments of principal on the renewed and extended Notes to be held by the two above-mentioned banks. The difference between said sum and $1,000,000, or $280,000, will be payable in equal semi-annual instalments to Southern Pacific Company, first on account of the principal of the aforesaid non-interest-bearing Serial Notes and then on account of the principal on the renewed and extended Note for $17,882,250 to be held by that Company. The principal amount of the renewed and extended Note for $17,882,250 will be payable to the extent of $120,000 on July 1, 1951, then in equal semi-annual instalments of $140,000 during the year ending July 1, 1952, and thereafter in semi-annual instalments of $500,000 each.

Appendix A.

$500,000 Gray's Point Terminal Railway Company First Mortgage Bonds. The principal amount and accrued interest of these bonds, which are not in default, will be paid by St. Louis Southwestern Railway Company at their maturity on December 1, 1947.

IV.

Undertakings of Railway Company.

The Railway Company, in connection with the dismissal proceedings, will undertake, subject to requisite approval of the District Court and the Interstate Commerce Commission, (a) to make all payments, enter into all undertakings, and take all other steps set forth in the Program, (b) to pay all proper costs and expenses incurred by officers of the Court in the reorganization proceedings and all administrative claims or expenses approved by the Court, (c) to pay all allowances and expenses (including reasonable attorneys' fees) of all committees or other representatives of creditors and stockholders, trustees under indentures, depositaries and other persons, incurred in connection with the proceedings and the Plan of Reorganization as may be approved by the Court within such maximum limitations as may be fixed by the Interstate Commerce Commission, (d) to pay all legal fees and expenses in connection with the dismissal of the bankruptcy reorganization proceedings to the extent required by indentures or other contracts or as may be approved by the Railway Company, and (e) to assume all contracts, commitments and obligations entered into or incurred by the Trustee in the operation of the properties of the Railway Company and all prior contracts, commitments, and obligations of the Railway Company which have not been disaffirmed by the Trustee.

Dated April 7, 1947.

Appendix B.

Exhibit 11 in the Hearings Held Before the District Court on May 19 and 20, 1947, on the Joint Petition of the Trustee and the Debtor to Dismiss the Reorganization Proceedings, Etc.

St. Louis Southwestern Railway Company

Cash on hand, January 1, 1947, plus proceeds of operation to June 30		$27 093 404
Payments contemplated for July 1, 1947:		
Obligation	*Principal*	
StLSW Second Mortgage	$ —	
StLSW Terminal Mortgage	8 063 000	
StLSW General Mortgage	—	
CA&E First Mortgage	932 232	
SN&ST First Mortgage	2 241 663	
Bank Notes	900 000	
R.F.C. Note—Southern Pacific	—	
Total Principal	$12 136 895	
	Interest	
StLSW Second Mortgage	$ 121 700	
StLSW Terminal Mortgage	403 150	
StLSW General Mortgage	2 331 875	
CA&E First Mortgage	591 484	
SN&ST First Mortgage	1 394 831	
Bank Notes	334 200	
R.F.C. Note—Southern Pacific	1 017 390	
Total Interest	$ 6 194 630	18 331 525
Remaining liquid resources July 2, 1947		$ 8 761 879
Proceeds of operation, July 1, 1947 to December 31, 1947, after paying principal of Gray's Point Terminal Bonds and interest on undisturbed debt, new notes, and extended notes	5 526 746	
Expenditures, July 1, 1947 to December 31, 1947, for principal and interest	1 107 276	
Net addition to cash last six months 1947		4 419 470
Liquid resources, December 31, 1947		$13 181 349

Appendix C.

EXHIBIT 15 IN THE HEARINGS HELD BEFORE THE DISTRICT COURT ON MAY 19 AND 20, 1947, ON THE JOINT PETITION OF THE TRUSTEE AND THE DEBTOR TO DISMISS THE REORGANIZATION PROCEEDINGS, ETC.

ST. LOUIS SOUTHWESTERN RAILWAY LINES

Estimated Income Account Years 1947-1951 giving effect to Proposed Financing as of July 1, 1947

	1947	1948	1949	1950	1951
1 Total Operating Revenues..	$53 083 000	$49 980 000	$47 560 000	$45 252 000	$42 982 000
2 Total Operating Expenses..	32 442 000	31 097 000	30 313 000	29 601 000	28 675 000
3 Net Revenue from Railway Operations	20 641 000	18 883 000	17 247 000	15 651 000	14 307 000
4 Taxes—Federal Income	5 233 000	4 798 000	4 203 000	3 640 000	3 174 000
5 All Others. Incl. Payroll	2 785 000	2 716 000	2 700 000	2 637 000	2 573 000
6 Hire of Equipment & Joint Facility Rents	1 832 000	1 668 000	1 614 000	1 562 000	1 509 000
7 Net Railway Operating Income	10 791 000	9 701 000	8 730 000	7 812 000	7 051 000
8 Non-Operating Income	248 000	127 000	127 000	127 000	127 000
9 Income Available for Fixed Charges	11 039 000	9 828 000	8 857 000	7 939 000	7 178 000
10 Fixed Charges	2 500 000	2 000 000	2 000 000	2 000 000	2 000 000
11 Net Income	8 539 000	7 828 000	6 857 000	5 939 000	5 178 000
12 Road and Equipment—Cash.	3 486 000	573 000	873 000	2 463 000	2 448 000
13 Serial Note Maturities	500 000	1 000 000	1 000 000	1 000 000	1 000 000

5-12-47.

Appendix D.

IN THE

DISTRICT COURT OF THE UNITED STATES
EASTERN DIVISION,

EASTERN JUDICIAL DISTRICT OF MISSOURI.

In the Matter of

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Debtor.

In Proceedings for the Reorganization of a Railroad.

No. 8497.

ORDER

LOOKING TO FINAL DISMISSAL OF THESE PROCEEDINGS, AUTHORIZING DEBTOR TO FILE APPLICATION WITH INTERSTATE COMMERCE COMMISSION, AND GRANTING OTHER RELIEF

* * * * *

Upon due consideration of the joint petition of BERRYMAN HENWOOD, Trustee of the property of St. Louis Southwestern Railway Company, Debtor, and of St. Louis Southwestern Railway Company of Texas, subsidiary debtor, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Debtor, verified and filed herein on the 30th day of April 1947, for an order dismissing these proceedings and for other relief, and the joint petition having been set down for hearing on the 19th day of May 1947, and having come on to be heard on said date;

And it appearing to the Court that the Trustee, pursuant to order of this Court, dated April 30, 1947, gave reasonable notice of the time and place of said hearing by mailing a copy of such order by registered mail to the Interstate

Commerce Commission, to each subsidiary debtor, to each of the mortgage trustees of the several debtors or their attorneys, to all intervenors herein or their attorneys, and to all other parties to whom the said Trustee customarily sends printed copies of orders entered in these proceedings, all as provided in such order:

And it further appearing to the Court that the Trustee, pursuant to said order of the Court, dated April 30, 1947, duly caused to be published the notice of the time and place of said hearing for three days, each of which was at least ten days prior to the date of said hearing, in the "St. Louis Post-Dispatch", "Dallas News", and "New York Times";

And the Trustee, the Debtor and other parties having appeared by their respective counsel at said hearing on said joint petition and the Court having heard such counsel and the testimony of witnesses thereat and having considered the "Program for Dismissal of Bankruptcy Reorganization Proceedings", dated April 7, 1947 (herein referred to as the Program), annexed to the joint petition and having considered the evidence presented at said hearing and having considered all objections to said joint petition filed herein or made at said hearing;

The Court makes the following

FINDINGS:

1. That the Debtor has, in the possession of the Trustee, sufficient cash, or assets which are the equivalent of cash, to enable it to carry out the Program and, in addition, to meet all proper requirements for working capital and the efficient maintenance and operation of its properties;

2. That the Debtor and its subsidiary debtors are no longer in need of reorganization and that, upon the carry-

ing out of the Program, the Debtor will be able to meet its debts and the debts of its subsidiary debtors as they mature;

3. That, upon the carrying out of the Program, all defaults in the payment of principal and interest on any obligations of the Debtor and its subsidiary debtors and all other defaults or events of default under any of the mortgages, indentures, or securities issued by the Debtor and its subsidiary debtors have been, or will have been, cured or remedied;

4. That, upon the Commission's approval of the extension, renewal, issuance, pledge and repledge by the Debtor of the securities necessary to carry out the Program, in so far as such approval may be requisite, these proceedings should be dismissed, that the respective properties of the debtors held by the Trustee should be returned to them, and that the Debtor should make all payments and take all steps set forth in the Program and assume all obligations of the Trustee and all prior obligations of the Debtor which have not been disaffirmed by the Trustee.

Now, Therefore, it is

ORDERED:

1. That the Debtor is authorized and directed to file an application with the Interstate Commerce Commission under Section 20 (a) of the Interstate Commerce Act for approval of the extension, renewal, issuance, pledge and repledge by the Debtor of such securities as are necessary to carry out the Program;

2. That the jurisdiction of the Court is retained over these proceedings to enter an appropriate order or orders

authorizing and directing the Debtor and other parties to consummate the Program and fixing the date for the filing of petitions for allowances; to dismiss the proceedings and to direct the return to the debtors of their respective properties held by the Trustee; to determine all allowances of fees and expenses; to direct the Trustee to prepare and file a final report and accounting of his administration of the trust estate; to approve the administration of the trust estate, to pass upon the final report and act of the Trustee and to order his discharge and the discharge of his surety; and to grant such other and further relief to which the Debtor and its subsidiary debtors and the Trustee and other parties hereto may be entitled.

(S) GEO. H. MOORE,
District Judge

Dated May 20, 1947.